

APPEAL NO. 032319  
FILED OCTOBER 7, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on July 23, 2003. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on \_\_\_\_\_, and did not have disability. Although initially disputed, the parties stipulated that the respondent (carrier) did not waive the right to contest compensability of the claimed injury. The claimant appeals the compensability and disability determinations and asserts that the hearing officer erred in admitting Carrier's Exhibit No. 6 over her objection. The carrier urges affirmance of the hearing officer's decision.

DECISION

Affirmed.

Whether the claimant sustained a compensable injury and had disability were factual questions for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). It was the hearing officer's prerogative to believe all, part, or none of the testimony of any witness, including that of the claimant. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). Nothing in our review of the record demonstrates that the challenged determinations are so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to disturb the hearing officer's decision on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986)

The claimant asserts that the hearing officer erred in admitting Carrier's Exhibit No. 6, a record of previous insurance claims involving the claimant. Upon being offered, the claimant objected to the exhibit on the grounds that it had not been timely exchanged pursuant to the requirements of Section 410.160 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.13(c)(1)(A) and (B) (Rule 142.13(c)(1)(A) and (B)). The hearing officer admitted the document for "impeachment purposes." In Texas Workers' Compensation Commission Appeal No. 92204, decided July 6, 1992, Texas Workers' Compensation Commission Appeal No. 94432, decided May 20, 1994, and Texas Workers' Compensation Commission Appeal No. 94910, decided August 26, 1994, the Appeals Panel indicated that it was unaware of any blanket exception to the exchange rule for witnesses and documents characterized as "rebuttal" or "impeachment" witnesses and documents. Accordingly, the hearing officer erred in admitting the exhibit. However, since prior to the introduction of the exhibit the claimant had testified about the incidents contained in the report, the admission of the report did not constitute



reversible error. See Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier **LUMBERMENS MUTUAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS  
AUSTIN, TEXAS 78701.**

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Chris Cowan  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Edward Vilano  
Appeals Judge